

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 234.6, 237.3, and 238.16, the Department of Human Services proposes to amend Chapter 108, "Licensing and Regulation of Child-Placing Agencies," Chapter 113, "Licensing and Regulation of Foster Family Homes," Chapter 156, "Payments for Foster Care and Foster Parent Training," and Chapter 200, "Adoption Services," Iowa Administrative Code.

The proposed amendments would make the following changes to rules regarding foster care and adoption:

- Amend record-check policies for foster and adoptive families to require fingerprinting only for the parent applicants, not for others in the household. The Department's current policy goes beyond what is required in federal legislation. Provisions for evaluating record-check findings are consolidated in the foster care licensing chapter.
- Amend policies on the license capacity for foster family homes to clarify the relationship between children already living with the family and the potential license capacity. The amendments specify that a license must have a capacity of at least one and that a child over the age of 18 who remains in foster care placement must be counted in the license capacity.
- Remove policies relating to "emergency" foster family care. No special emergency care homes are being designated, and variances to exceed a home's capacity for a placement may be granted under the provisions for placing a specific child. Special payment provisions for emergency foster family care beds would be eliminated.
- Require foster parents who make purchases using a child's clothing allowance to submit receipts for auditing.

Except for the capacity variance provisions, these amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before December 24, 2008. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code sections 234.35, 237.8, and 600.8 and Iowa Code chapter 238.

The following amendments are proposed.

ITEM 1. Amend subparagraph **108.8(1)"c"(13)** as follows:

(13) Record checks. The licensed child-placing agency shall submit record checks for each applicant and for anyone who is 14 years of age or older living in the home of the applicant to determine whether they have any founded child abuse reports or criminal convictions or have been placed on the sex offender registry. ~~The licensed child-placing agency shall use~~ Form 470-0643, Request for Child Abuse Information, and Form 595-1396, DHS Criminal History Record Check, Form B, shall be used for this purpose. ~~Each person subject to record checks applicant~~ shall also be fingerprinted for a national criminal history check. The department's contractor for the recruitment and retention of resource families shall assist applicants in completing required record checks, including fingerprinting.

Any criminal or abuse records discovered shall be evaluated according to the procedures in rule 441—113.13(237).

ITEM 2. Amend subrule 113.4(1) as follows:

113.4(1) Number of children. A foster family home ~~shall be licensed for the may care of~~ for up to five children ~~unless a variance is approved as described in this rule, including~~ The license capacity shall be based on the number of the foster family's biological and adoptive children and any relative placements. The license shall be issued for at least one child. A child who has reached the age of 18 and remains eligible for foster family care shall be included in the license capacity. Any variance to this rule must:

a. and b. No change.

c. Meet one of the following criteria:

(1) No change.

(2) The foster parents have three or more ~~biological and adoptive children and relative placements~~ in the home and have shown the ability to parent a large number of children. A variance may be approved to allow the placement of up to three foster children as set forth in the chart below:

No. of Children in the Home (birth/relative/adoptive placements)	Maximum License Capacity:	
	Without variance	With variance
0 children	5	Not applicable
1 child	4	Not applicable
2 children	3	Not applicable
3 children	2	3
4 children	1	3
5 or more children	0 Not applicable	3

~~(3) —An emergency placement must be made in a foster family home that causes the home to exceed its licensed capacity. These emergency placements shall be made according to a preapproved service area plan as outlined below and are limited to a maximum of 30 days.~~

~~Before the start of each fiscal year, each service area shall submit to the central office for approval a plan for when an emergency occurs which necessitates the placement of a child in a foster family home that would exceed the licensing capacity. The plan shall define emergencies and identify a specific pool of preapproved homes which shall provide for placement of up to three additional foster children above the number that is allowed by the variances in the chart in subparagraph (2).~~

~~(4) (3)~~ A variance beyond the maximum capacity of the foster home license is needed for the placement of a specific child in foster family care. A child-specific variance shall end when that child leaves the placement or any other change brings the family into licensed capacity.

d. No change.

ITEM 3. Amend rule 441—113.13(237) as follows:

441—113.13(237) Record checks. ~~The department shall submit record~~ Record checks are required for each foster parent applicant and for anyone who is 14 years of age or older living in the home of the applicant. The purpose of the record checks is to determine whether they have any of these persons has any founded child abuse reports or criminal convictions or have has been placed on the sex offender registry. The department shall use Form 470-0643, Request for Child Abuse Information, and Form 595-1396, DHS Criminal History Record Check, Form B, shall be used for this purpose. Each person subject to record checks foster parent applicant shall also be fingerprinted for a national criminal history check. The department's contractor for the recruitment and retention of resource families shall assist applicants in completing required record checks, including fingerprinting.

113.13(1) Evaluation of record. If the applicant or anyone living in the home has a record of founded child abuse, a criminal conviction, or placement on the sex offender registry, the department

shall not license the applicant as a foster family, unless an evaluation determines that the abuse or criminal conviction does not warrant prohibition of license.

~~EXCEPTION: An individual applying to be a foster parent shall not be granted a license and an evaluation shall not be performed if the applicant or anyone living in the home of the applicant has been convicted of a felony offense as set forth in Iowa Code section 237.8(2) "a." The person making the investigation shall not approve a prospective applicant and shall not perform an evaluation if the applicant or anyone living in the home of the applicant has committed a crime in another state that would be a forcible felony if the crime would have been committed in Iowa, as set forth in Iowa Code section 237.8(2) "a."~~

a. Exclusion. An evaluation shall not be performed if:

(1) A person has been convicted of a felony offense as set forth in Iowa Code section 237.8(2) "a"(4) or 600.8(2) "b"(1); or

(2) A person has committed a crime in another state that would be a felony as set forth in Iowa Code section 237.8(2) "a"(4) or 600.8(2) "b"(1) if the crime would have been committed in Iowa.

b. Scope. The evaluation shall consider the nature and seriousness of the founded child abuse or crime in relation to:

(1) the The position sought or held,

(2) the The time elapsed since the circumstances under which the abuse or crime was committed,

(3) the The degree of rehabilitation,

(4) the The likelihood that the person will commit the abuse or crime again, and

(5) the The number of abuses or crimes committed by the person.

c. Evaluation form. The person with the founded child abuse or criminal conviction report shall complete and return Form 470-2310, Record Check Evaluation, within ten calendar days of the date ~~on~~ the form of receipt to be used to assist in the evaluation. Failure of the person to complete and return Form 470-2310 within the specified time frame shall result in denial of licensure. Form 470-2386, Record Check Decision, shall be issued when an applicant fails to complete the evaluation form within the specified time frame.

113.13(2) Evaluation process. The service area manager or designee shall ~~make~~ conduct the evaluation and make the decision. Within 30 days of receipt of the completed Form 470-2310, Record Check Evaluation, the department shall mail to the individual on whom the evaluation was completed ~~and to the registrant for an employee of the registrant~~ Form 470-2386, Record Check Decision, ~~that~~ which explains the decision reached regarding the evaluation of an abuse or a crime. The department shall also issue Form 470-2386 when an applicant fails to complete the evaluation form within the specified time frame.

113.13(3) License renewal. Foster parents applying for an annual license renewal of a license ~~may~~ shall be subject to the same checks as new applicants ~~when there is reason to believe that a founded abuse or conviction of a crime has occurred, except for fingerprinting.~~ The department shall evaluate only abuses and convictions of crimes that occurred since the last record check. The evaluation shall be conducted using the same process.

This rule is intended to implement Iowa Code section 237.8(2).

ITEM 4. Amend subrule 113.17(1) as follows:

113.17(1) Physical examinations.

a. Each child ~~should~~ shall have a an initial physical examination by a physician ~~prior to~~ before the initial placement in the foster home to determine the child is free from contagious or infectious diseases during an episode of care or within 14 calendar days of placement. When this physical examination cannot be given prior to admission, an examination shall be scheduled within seven days after placement. The physician shall complete a preliminary screening for dental and mental health and refer the child to a dentist or mental health professional if appropriate. To address any immediate medical needs, the child shall be seen immediately at an emergency room, an urgent care center, or other community health resource.

b. An annual medical review of treatment received shall be obtained from the health practitioner or practitioners.

c. When a child is in continuous foster care, a new physical examination shall not be required when the child transfers from one foster family home to another unless there is some indication that an examination is necessary.

ITEM 5. Rescind the definition of “Emergency foster family care” in rule **441—156.1(234)**.

ITEM 6. Amend subrule 156.8(1) as follows:

156.8(1) Clothing allowance. When, in the judgment of the worker, clothing is needed at the time the child is removed from the child’s home and placed in foster care, an allowance may be authorized, not to exceed \$250, to purchase clothing.

a. A second clothing allowance, not to exceed \$200 for family foster care and \$100 for all other levels, may be approved, not more than once within a calendar year, by the worker when a child in foster care needs clothing to replace lost clothing or because of unusual growth or weight change, and the child does not have escrow funds.

b. When clothing is purchased by the foster family, the foster family shall submit receipts to the worker within 30 days of purchase for auditing purposes, using Form 470-1952, Foster Care Clothing Allowance.

ITEM 7. Amend rule 441—156.11(234), introductory paragraph, as follows:

441—156.11(234) Emergency care. ~~Each service area shall have facilities to provide 24-hour emergency foster care. Emergency care shall not exceed 30 days in one six-month period, and the facility’s policy may limit placement to less than 30 days. The following options shall be available for funding emergency care for each service area:~~

ITEM 8. Rescind and reserve subrules **156.11(1)** and **156.11(2)**.

ITEM 9. Amend paragraph **200.4(1)“b”** as follows:

b. *Record checks.* ~~The department shall submit record~~ Record checks are required for each applicant and for anyone who is 14 years of age or older living in the home of the applicant to determine whether they have founded child abuse reports or criminal convictions or have been placed on the sex offender registry. ~~The department shall use Form 470-0643, Request for Child Abuse Information, and Form 595-1396, DHS Criminal History Record Check, Form B, shall be used~~ for this purpose. Each ~~person subject to record checks~~ applicant shall also be fingerprinted for a national criminal history check. The department’s contractor for the recruitment and retention of resource families shall assist applicants in completing required record checks, including fingerprinting.

(1) If the applicant, or anyone living in the home of the applicant, has a record of founded child abuse, a criminal conviction, or placement on the sex offender registry, the department shall not approve the applicant as an adoptive family, unless an evaluation determines that the abuse or criminal conviction does not warrant prohibition of approval. The evaluation shall be conducted according to procedures in 441—subrule 113.13(1) or procedures in 441—subrule 108.9(4) for a child-placing agency.

~~EXCEPTION: The person making the investigation shall not approve a prospective applicant and shall not perform an evaluation if the applicant or anyone living in the home of the applicant has been convicted of a felony offense as set forth in Iowa Code section 600.8(2) “b.” The person making the investigation shall not approve a prospective applicant and shall not perform an evaluation if the applicant or anyone living in the home of the applicant has committed a crime in another state that would be a forcible felony if the crime would have been committed in Iowa, as set forth in Iowa Code section 600.8(2) “b.”~~

The evaluation shall consider the nature and seriousness of the abuse or crime, the time elapsed since the commission of the founded or confirmed abuse or crime, the circumstances under which the abuse or crime was committed, the degree of rehabilitation, the likelihood that the person will commit the abuse or crime again, and the number of abuses or crimes committed by the person.

~~The person with the founded child abuse or criminal conviction report shall complete and return Form 470-2310, Record Check Evaluation, within ten calendar days of the date on the form to be used to~~

~~assist in the evaluation. Failure of the person to complete and return Form 470-2310 within the specified time frame shall result in denial of approval for adoption.~~

~~The evaluation and decision shall be made by the service area manager or designee. Within 30 days of receipt of the completed Form 470-2310, the department shall mail to the individual on whom the evaluation was completed Form 470-2386, Record Check Decision, which explains the decision reached regarding the evaluation of an abuse or crime. Form 470-2386 shall also be issued when an applicant fails to complete the evaluation form within the specified time frame.~~

(2) The department shall assess fees associated with the record checks to the adoptive applicant unless the family is being studied to adopt a child with special needs.